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C O N F I D E N T I A L SECTION 01 OF 02 KYIV 000225

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TAGS: PGOV PREL UP

SUBJECT: UKRAINE: MOROZ, REGIONS PLAYING GAMES WITH THE CABMIN LAW

REF: KYIV 0135

Classified By: Political Counselor Kent Logsdon for reasons 1.4(a,b,d).

¶1. (C) Summary. Rada Speaker Moroz and the Yanukovych government have used "creative" interpretations of the constitution and the Rada rules of procedure to try to bring into force the controversial law on the Cabinet of Ministers, despite presidential claims that the law was vetoed (reftel).

Their efforts appear to be an attempt to demonstrate authority over the President and perhaps give him one last chance to sign the new law and to force him to concede to their position. Rada Speaker Moroz on January 29 posted the law on the Rada website, but declined to publish it in the two Rada printed publications which would make the law official. On January 30, the Justice Ministry included the law on its registry of all legal acts, but both the Rada and the government have been vague about whether the law is actually in force. At the same time, Moroz claimed the Rada, which comes back into session February 6, was preparing amendments to the law to remove provisions not compatible with the Constitution.

¶2. (C) Comment. It seems that Yushchenko's second veto of the CabMin law on January 19 (the Rada overrode his first veto on January 12), which his team argues is legal justified on a technicality (the January 12 text differed slightly from the December text he had already vetoed), has frustrated the majority coalition. Even after Yushchenko's veto claim, Moroz continued to seek Yushchenko's signature on the January 12 bill, despite the Rada Speaker's right to sign and promulgate a law himself in the absence of Presidential endorsement, if he felt the president had no right of veto. Moroz's hesitation suggests that he knows he may be on legally and constitutionally shaky ground. In response, Moroz has interpreted the Rada's rules as he sees fit; his actions have been backed by the Prime Minister's office and the government, who also insist the law is coming into effect one way or another. However, the fact that both Moroz and the Yanukovych team are offering to walk back the most controversial clauses in the law, if Yushchenko will cooperate, suggests that the coalition is not fighting to preserve the law as it currently stands, but may be using it as one more show of political one-up-manship vis-a-vis Yushchenko. With less than a week left before the new Rada session opens on February 6, it is clear that the coalition is looking for at least a symbolic victory on this issue. End summary and comment.

Loopholes and Fine Print

¶3. (SBU) Article 94.4 of the constitution states that if the President refuses to sign a law that has been passed by the 2/3 majority required to override a veto, the Speaker is obligated to sign the law, promulgate it, and publish it. While constitutionally, Moroz could have done so as early as

January 22, he delayed the decision to promulgate or publish the law, finally posting it on the Rada website on January 29. Article 94.5 states that a law enters force ten days from the day of its official promulgation, but not prior to the day of its publication. Article 134 of the Rada Rules of Procedure--not itself a law but a powerful set of regulations--states that to be official, a law must be published in one of two Rada publications: "Holos Ukrainy" or "Verkhovna Rada Bulletin." Presidential representative to the Rada Roman Zvarych cited this rule as the reason why they were not recognizing the law as having been promulgated.

14. (C) Moroz and PM Chief of Staff Lyovochkin complained separately to Ambassador in late January that the Presidential Secretariat was playing games with the veto. The official explanation for Yushchenko's second veto--after the override vote of his first veto--was that the texts differed between the original law sent to Yushchenko on December 21 and the law sent to him after the override vote on January 12. Moroz explained this to Ambassador on January 23 as simply a misprint, one that the Presidential Secretariat knew had happened. According to Moroz,

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Secretariat Chief Baloha had told Moroz that he wanted to

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give Yushchenko the misprinted version so that they would have a loophole to allow a second veto. On January 23, Lyovochkin told the Ambassador that the presidential team's legal argument--that the final draft of the CabMin law forwarded to the President had not been identical to the first version the President had vetoed--was silly, a child's game, and not presidential.

15. (C) Comment: Silly or not, our understanding is that a law in Ukraine is the physical document signed by the Rada Speaker and President. Even if Moroz unwittingly signed a

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misprinted document before passing it to the Presidential Secretariat, Yushchenko appears to have a legal leg to stand

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on, confirmed by a 1998 Constitutional Court ruling cited by his team.

Compromise Possible?

16. (SBU) Yushchenko's consistent position since December has been that he wants a new, compromise CabMin law adopted. He sent the Rada a number of changes to the current law, which would remove the most egregious infringements of his power (see reftel for discussion of the law). Moroz publicly admitted that there might be some unconstitutional aspects of the law that the Rada would be willing to change, but only on its terms: Yushchenko should first sign the January 12 law, and only then would the Rada adopt the amendments. In fact, Moroz told the press on January 29 that he was already working on the changes--the amended law would not include nomination of the prime minister and defense and foreign ministers by the coalition in the case of the President choosing not to nominate a candidate within 1 days, as well as one of the contentious issues concerning countersigning documents. However, he maintained that the amendments could not be adopted until the law comes into effect; absent the publishing of the law in an official Rada publication, that implies Yushchenko agreement either to sign the January 12 law or retract his second veto/referral of the law back to the Rada.

17. (C) In a January 22 meeting, Lyovochkin told Ambassador that Yanukovych had proposed to Yushchenko that, if the President agreed to sign the new CabMin law, the Rada would draft a new bill to amend the CabMin law to take into account

eight suggestions that the President had made. Justice Minister Lavrynovych echoed this sentiment publicly on January 31, claiming it was not possible to hold a revote on a law already in force. Instead it was necessary to acknowledge the law as enacted, then pass amendments as separate legislation.

End Game: Symbolic Victory

18. (C) Comment: For all their confident bluster, the Rada and government are dancing around the rules for officially promulgating/publishing the law. There is no legal compulsion why Yushchenko as President must sign the Cabinet of Ministers law; if the second veto were invalid, in the absence of a presidential signature, Moroz has full constitutional authority to promulgate and publish the law, making it official. Assuming that people ignore the second veto and the Rada does pass the amendments that Yushchenko wants, a presidential signature on the original law would appear simply to be a sign of victory for the coalition in the ongoing political posturing. Although the coalition, especially the PM's team, continues to insist that they want a broader coalition that includes Yushchenko and Our Ukraine, it seems clear that they would prefer that such a coalition be on their terms.

19. (U) Visit Embassy Kyiv's classified website:

www.state.sgov.gov/p/eur/kiev.

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